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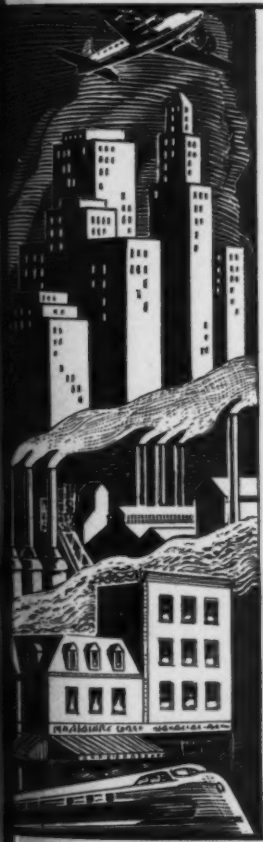

Doing Business in New States

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STOP TRANSFER!

A GOOD transfer agent not only maintains a Stop Transfer file in which are shown the name and number, and number of shares on any certificate of the company's stock that has been reported lost, or that has been made the subject of a court proceeding of which the corporation has been put on notice; he makes it obligatory that *every single request* for a transfer, no matter from whom, be checked against that file before any step is taken to change the record of its ownership.* That is the practice of The Corporation Trust Company, a practice which has been proved by long experience to be the safest and wisest for all concerned.

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DECEMBER 1948

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Recent Decisions

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doing business in new states

AS A NEW YEAR approaches, it is customary for attorneys, who are directed by client corporations to secure authority to do business in states in which the companies have not previously been licensed, to give special consideration to the time when the qualifications are to take place—particularly, whether they should be effected before or after January 1. This factor is weighed with a view to possible savings in connection with the payment of state income and other annual taxes, and to determine if it is possible to postpone, for a year, the preparation and filing of complicated state reports related to such annual taxes, which, if required to be filed early in the new year by reason of qualification before January 1, would be concerned with but a few days' activity in the current year.

For instance, there are nine states where, if business is begun and qualification is effected before January 1, franchise tax returns and substantial franchise tax payments will be required early in the new year. However, should such business and qualification be postponed until after January 1, these returns and payments will not be expected until a year later.

If a corporation which operates on a calendar year basis enters new states during the last days of the current year, it may anticipate, in at least 31 states, being required to file, early in the new year, net income tax returns showing taxable net income related to those states, measured by the activity of the comparatively few days during the current year in which business was done. A delay in qualification and the commencement of business activities until after January 1 in any of these states would postpone the necessity of the preparation and filing of the first income tax returns for a year.

Early in the new year, returns of information at the source are called for in 32 states and returns of taxes withheld at the source under the personal income tax laws are required of companies active in six of these states before the close of the current year. Here, too, the first filing of such forms may be postponed for a year if business activity within such states is delayed until after January 1.

Similar situations will be found to exist in certain states with regard to the filing of annual reports, personal property tax returns, chain store tax applications and the corresponding payments. Therefore, it is not unusual for counsel to find, upon investigation, that considerable accounting work by his client corporations may be eliminated and the first payment of taxes such as those mentioned may be deferred for a year if it is feasible to delay business activity and qualification until immediately after the close of the current year.

domestic corporations

DELAWARE

Newly created but unfilled directorships ruled not to be included in determining the number necessary to constitute a quorum of the board of directors.

At the time of a meeting of the board of directors of plaintiff corporation, concerning which a question of a quorum was before the Court of Chancery of New Castle County, the by-laws provided for ten directors and that a majority constituted a quorum. Before that meeting was held, only seven directors had been elected and no one had ever been elected to the other three directorships. The court ruled that the presence of four disinterested directors at the meeting constituted a quorum for the purpose of considering a transaction which was ratified at the meeting.

In the course of its opinion, the court had occasion to refer to its recent decision in *Johnston et al. v. Automatic Steel Products, Inc. et al.*, 60 A. 2d 455, (The Corporation Journal, October, 1948, page 185), where it was held that a by-law which authorized the encumbent directors to fill newly created directorships was invalid. It observed that "the fact that such authority also appeared in the certificate of incorporation does not alter the result." It was ruled that a person whom the directors purported to elect a director at the meeting in question, to fill one of the three directorships mentioned, was not legally elected as such.

The court reached the conclusion that newly created but unfilled directorships could not be counted, under Section 9 of the General Corporation Law and the company's existing by-law, in determining the number necessary to constitute a quorum of the board of directors at the meeting.

Belle Isle Corporation v. MacBean et al., Court of Chancery, New Castle County, October 6, 1948. Commerce Clearing House Court Decisions Requisition No. 398030.

FLORIDA

Failure of directors to extend pre-emptive right to purchase new stock to majority shareholder regarded as a breach of duty.

Plaintiff below, the Times Publishing Company, was the owner of a majority of the stock of another Florida corporation, the Alpha Holding Corporation, at a time prior to the issuance by the directors of the latter company of

325 of its shares to another stockholder. Thereupon this other stockholder became owner of a majority of the stock. Plaintiff then instituted suit to cancel the sale of the 325 shares and to set aside certain action taken by the holding company at a meeting at which the 325 shares were voted, alleging these shares had been issued illegally and without authority as the result of a scheme to obtain control of the company, and that there existed a preemptive right in plaintiff to purchase a pro rata share thereof rather than the sale of unissued stock by the directors to another.

A judgment in favor of the plaintiff was affirmed by the Supreme Court of Florida, Division A. The higher court regarded the suit as one for the purpose of determining whether the change of status of the plaintiff as a majority stockholder was legally accomplished. It found a statutory requirement, in Section 612.20, F. S. A., "that unless otherwise provided in the certificate of incorporation or amendment thereof, every stockholder of a corporation shall upon the sale for cash of any new stock of such corporation of the same class as that he already holds, have the right to purchase his pro rata share of such stock at the price which it is offered to others, which price, in the case of stock having par value, may be in excess of par if the Board of Directors shall so determine." There not having been a compliance with this provision, the court observed: "The directors as minority stockholders caused to be sold 'unissued stock' of the corporation for the purpose of placing in friendly hands the power to vote the shares favorable to the corporate policy advocated by them and thereby render the opposite faction a minority group of stockholders in the corporation." This was regarded as a breach of duty.

Rowland et al. v. Times Publishing Co., 35 So. 2d 399. W. G. Ramseur of St. Petersburg and B. K. Roberts and Keen & O'Kelley of Tallahassee, for appellants. Bussey, Mann, Simmons & Fielding, Austin L. Richardson and Arthur R. Thompson of St. Petersburg, for appellee.

NEW JERSEY

Stockholder, acting in good faith, held to have right to inspect corporate books for a purpose germane to his rights as a stockholder, burden of proof of bad faith being upon a corporation refusing the right of inspection of books.

Relator stockholder sought by a mandamus proceeding to compel respondents to give him a list of preferred stockholders, for the purpose of presenting to them a plan of recapitalization.

The Supreme Court of New Jersey, in allowing a peremptory writ, remarked: "The law is settled that a stockholder has a right to inspect the books of the corporation where the application is made in good faith and is for a purpose germane to the applicant's rights as a stockholder." "It needs no extended discussion to establish that a plan of recapitalization is germane, i. e. relevant, to the rights of a stockholder. Respondents do not

challenge that the purpose is germane. They contest the application on the ground that it is not made in good faith. The burden of proof of bad faith is upon the corporation refusing the right of inspection to a stockholder."

Morris v. United Piece Dye Works et al., 59 A. 2d 660. Samuel Morris of Atlantic City, for relator. Milton McNulty & Augelli (John Milton, of counsel) of Jersey City, for respondents.

Chancery Court grants interlocutory injunction restraining consummation of directors' plan to refund part of company's debt.

Complainants, the holders of common stock and of debentures in defendant company, sought to enjoin the consummation of a plan for refunding part of the company's debt, which the directors had formulated and which they proposed to consummate immediately. The complainants alleged that the plan was beyond the powers of the directors and unlawful in certain respects and was so unwise and disadvantageous to the company as to indicate bad faith and improper motives on the part of the directors.

The Court of Chancery, after an examination of the financial status of the company, reached the conclusion that while the directors may not have been alert or shown business acumen, the circumstances did not indicate bad faith on their part.

As to the question whether the plan of refinancing was within the scope of the powers of the board of directors, or whether it was necessary to submit the plan to the stockholders for approval, the court, after examination of the statute and the charter, concluded: "While the power of directors to agree on the terms of payment of the Company's debt and to arrange for security cannot be doubted, yet when they plan so to exercise the power as to change substantially the capital structure of the company and to control in important respects the discretion of their successors and of the stockholders for a long period, they should seek the approval of the stockholders before committing the company."

Another question concerned the preemptive right of shareholders to subscribe to authorized, but unissued, shares of the common stock of the company which it was proposed, under the plan, to offer and issue to debenture holders in order to cancel debentures held. Under this arrangement, the company's common stock would have been increased 50%, without giving the existing stockholders opportunity to subscribe for the new stock. The court, noting the situation called for an early decision, precluding extended study of the problem, said: "I lean toward the view that in this case, where the directors propose to increase the outstanding common stock by more than 50%, each stockholder has a right to subscribe, unless the right be cut off by action of two-thirds in interest of the stockholders."

An interlocutory injunction was granted.

Hodge et al. v. Cuba Co. et al., 60 A. 2d 88. Carpenter, Gilmour & Dwyer, James D. Carpenter and Elmer J. Bennett of Jersey City, for complainants. Stryker, Tams & Horner and Josiah Stryker, of Newark, for defendant Cuba Co.

NEW YORK

Power of attorney, given by minority stockholders to one not a stockholder for purpose of investigating activities and condition of their corporation, ruled not to give him legal right to maintain court proceeding to inspect corporate books and records.

Two stockholders, owning about 40% of the capital stock of a corporation, desiring petitioner to investigate the past and present activities and condition of the company, gave him a power of attorney appointing him their attorney-in-fact. Armed with this, he applied, in this proceeding, for an order against the manager and auditor of the company, directing them to make available to him for inspection and examination by him, the charter, by-laws, minute book, stock book, stock register and books of account of the corporation.

The power of attorney was not a specific power to conduct and make the investigation mentioned, being merely a general power appointing petitioner to do and perform all and every act and thing whatsoever requisite and necessary to be done "in and about the premises." Just what the quoted phrase had reference to was not stated in the power.

The defendants contended that petitioner was without right or authority to institute or maintain the proceeding in his own name individually. This objection was regarded as substantial and sound by the New York Supreme Court, Special Term, New York County, Part I. The court commented on the vague and indefinite character of the power and remarked: "But even assuming it expressly stated and intended him to be appointed attorney-in-fact to conduct the said investigation, it is my view that he is without legal right to institute or maintain this proceeding." The court noted that Section 210 of the Civil Practice Act requires every action to be brought in the name of the real party in interest, with certain exceptions which were not pertinent here, and concluded that the petitioner was not the real party in interest and was not in a position to maintain this proceeding, as he was not a stockholder and did not occupy a stockholder's status. His petition was, therefore, dismissed.

Application of Gill, 80 N. Y. S. 2d 400. Joseph E. Moukad and Howard T. Gill of New York City, for petitioner. Pyne & Lynch of New York City, for respondents.

Right of stockholders, dissenting to sale under Secs. 20 and 21, Stock Corporation Law, to appraisal of their stock, ruled confined to voting stock only and not to apply to nonvoting shares.

Petitioners sought the appointment of appraisers under Sections 20 and 21 of the Stock Corporation Law to appraise the value of their common and preferred stock.

It was contended by the respondent corporation that in no event were the petitioners holding preferred stock entitled to have the preferred stock appraised. The Supreme Court, Special

Term, Bronx County, Part I, noted that Section 20 provides that a corporation may sell or convey certain assets with the consent of two-thirds of the stockholders "entitled to vote thereon" and further provides with respect to such stockholders that any such stockholder not voting in favor of such proposed sale and conveyance may apply to have such stock appraised and paid for upon compliance with the procedural requirements therein prescribed. By the use of the phrase quoted, the court concluded there was indicated "a clear legislative intent to confine and limit the rights to appraisal under Section 20 to voting stock only and as indicating the exclusion of non-voting shares."

As to a contention that the court should take no action until the proposed sale had been effected, the court held that "the right to apply for appraisal is not dependent upon an actual sale of the corporate property being consummated, but that upon approval of the resolution authorizing the proposed sale the dissenting stockholders acquire immediately the right to commence the statutory proceeding for appraisal, subject to the determination by the court as to whether appraisers shall be appointed, depending upon the facts then present. But actual consummation of the sale is not a condition precedent to the right of the objecting stockholders to institute the proceeding."

Application of Harwitz, 80 N. Y. S. 2d 570. Pomerantz, Levy Schreiber & Haudek (Leonard I. Schreiber and Paul A. Phillips, of counsel), of New York City, for petitioners Steinberg et al. Samuel E. Harwitz of New York City, pro se. Meyer Lavenstein of New York City, for respondent.

OKLAHOMA

Equal division between opposing factions resulting in directors' deadlock, ruled ground for appointment of receiver and dissolution.

The Supreme Court of Oklahoma has recently held that where the stock of a solvent corporation is equally divided between opposing factions, and because of dissensions and deadlock on the board of directors the corporation cannot function properly, the trial court did not err in appointing a receiver for the corporation; and if impossible for it to carry on its business through its officers, the court may dissolve the corporation and distribute its assets.

Guaranty Laundry Company et al. v. Pulliam et al., 191 P. 2d 975. John H. Cantrell, and Cantrell, Carey & McCloud of Oklahoma City, for plaintiffs in error. Suits & Fellers, Fred E. Suits and James D. Fellers of Oklahoma City, for defendants in error. Commerce Clearing House Court Decisions Requisition No. 386228.

Certificate for class of stock not authorized by charter of issuing company, ruled void.

Plaintiff sought to compel defendant corporation to recognize a certificate for one share of capital stock held by him. The certificate had been delivered to plaintiff by the corporation's president in exchange for a list of likely

customers furnished by the plaintiff. The certificate, however, was of a type not authorized by the Articles of Incorporation. Under those Articles, only one kind of stock, common stock, was authorized. Plaintiff's certificate contained the following provision: "The within is non-profit sharing non-dividend stock."

The Supreme Court of Oklahoma affirmed a judgment which decreed the certificate to be void and which ordered its delivery to the Secretary of the corporation for cancellation. The court found no authority in the Articles of Incorporation or in any amendment for a class of stock as mentioned in the certificate held by the plaintiff. "Our statutes," said the court, "authorize the issuance of stock of a restricted or qualified class only when such restriction or qualification shall be stated and expressed in the Articles of Incorporation or an amendment thereof." The court concluded: "Clearly, the issue of stock as mentioned in the certificate was unauthorized and void."

Pierce v. Guaranty Laundry, Inc., 194 P. 2d 875. Albert D. Lynn (Dudley, Duvall & Dudley, of counsel), of Oklahoma City, for plaintiff in error. M. W. McKenzie and Everest, McKenzie, Gibbens & Crawford of Oklahoma City, for defendant in error.

WASHINGTON

Minority stockholders ruled not entitled to vote their stock cumulatively in election of directors, over objection of majority.

In an action instituted by relators, a minority of the stockholders of a Washington corporation, against defendants, constituting a majority of the stockholders, the basic question presented was: "Are stockholders of a private corporation, organized under the General Business Corporation Act in 1919, the by-laws of which corporation provide for straight voting of stock, entitled, solely by virtue of the adoption of the Uniform Business Corporation Act of 1933, Rem. Rev. Stat. Sec. 3803-1 et seq., to vote their stock cumulatively, over the objection of the majority stockholders, at a stockholders' meeting called for the purpose of electing directors?"

The trial court, sitting without a jury, held that relators were not entitled to vote their stock cumulatively and entered judgment dismissing the action. Upon appeal, this judgment was affirmed by the Supreme Court of Washington, Department 2, after an examination of the pertinent statutory and case law.

State ex rel. Swanson et al. v. Perham et al., 191 P. 2d 689. Walter V. Swanson of Yakima, for appellants. Grady & Grady and Gavin & Robinson of Yakima, for respondents.

Arkansas Constitutional Amendment Rejected

An initiative petition, proposing to amend the Arkansas Constitution by abolishing the state ad valorem taxes on real and personal property was defeated at the November election.

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foreign corporations

NEW JERSEY

Service of process upon unlicensed company with office in state, upheld, where made upon agent soliciting orders and making deliveries.

The defendant, a New York corporation not licensed in New Jersey, sought to set aside service of process made upon an individual, named Maroldi, as its agent. The company, engaged in the business of manufacturing photo engravings, had its office and principal place of business in New York City. The agent who was served solicited business in New Jersey from an office in that state, where clerical and delivery help was employed. Orders were forwarded to the New York office for approval. Deliveries of defendant's products were made by the agent in a truck belonging to him. A personal property tax was paid by the company upon the property located in the New Jersey office.

"The decisive question," said the New Jersey Supreme Court, Monmouth County, "is whether the company was doing business in this State in such a manner as to render (it) amenable to service of process under the above statute. The question of whether or not a foreign corporation is doing business in this State is one that cannot be decided by a hard and fast rule. Those cases which hold that isolated transactions of business are not enough, such as *Mennen Hat Co. v. Stanley Stores,* 9 N. J. Misc. 320 (Supreme Court 1931), and those which hold the taking of orders and solicitation of business by agents who come into this State for that purpose to be insufficient, such as *McClelland v. Colt's Patent Fire Arms Mfg. Co.,* 10 N. J. Misc. 156 (Supreme Court 1932), are not applicable to the facts in this case."

"Applying the pertinent principles to the instant case, it appears that Maroldi was given adequate rank and his authority was of sufficient generality to constitute him a representative for service under the statute. *Weiss v. Shapiro Candy Mfg. Co. Inc.,* 126 N. J. L. 71 (Court of Errors and Appeals 1940).

"The motion to set aside the service of the summons and complaint and to quash the summons is denied."

*Jacobs v. Horan Engraving Co., Inc.,** 61 A. 2d 22. Parsons, Labrecque, Canzona & Combs (Thomas J. Smith, of counsel), of Red Bank, for plaintiff. Schneider & Schneider (C. Conrad Schneider, of counsel), of Englewood, for defendant. Commerce Clearing House Court Decisions Requisition No. 396579.

* The full text of this opinion is printed in the **State Tax Reporter,** New Jersey, page 513.

NEW YORK

Corporation selling goods through local broker, or upon counter-offers from buyers approved out of state, ruled not "doing business" to support service of summons.

"This," observed the Supreme Court, Special Term, New York County, Part I, "is a motion to vacate the service of summons upon the officer of a foreign corporation on the ground that the latter is not doing business here. It appears quite clearly that defendant has no office, bank account, telephone service, employees or officers within this state. The co-defendant, in what is perhaps most aptly described as the capacity of a broker, sells the goods of the moving defendant. These sales sometimes result from advices to the broker from the moving defendant that goods are available at a certain price. The broker solicits sales, reports counter-offers which it accepts only with the moving defendant's approval. Shipment is then made against the purchaser's letter of credit. At other times purchasers here inquire of the broker whether or not certain goods are available and the broker seeks to obtain such goods from the moving defendant as well as others. Again the approval of the parties is required and shipment made against the purchaser's letter of credit. These transactions have over the years been substantial. On a few isolated occasions the moving defendant has shipped goods on a consignment and joint venture basis. Considering all the transactions and their nature it would seem that the only substantial and continuous business is not performed by the defendant, but by others in its behalf within the rulings in Bank of America v. Whitney Cent. Nat. Bank, 261 U. S. 171, 43 S. Ct. 311, 67 L. Ed. 594, and Compania Mexicana Refinadora Island, S. A. v. Compania Metropolitana De Oleoductos, 250 N. Y. 203, 164 N. E. 907. The motion is accordingly granted."

Rockmore Co., Inc. v. Hoffenberg & Co., Ltd., et al., 81 N. Y. S. 2d 201. Conrad & Smith (Junius P. Abramson, of counsel), of New York City, for plaintiff. Krause, Hirsch, Levin & Heilpern (George J. Hirsch, of counsel), of New York City, for defendant Hoffenberg & Co., Ltd.

Suit between non-resident plaintiff and foreign corporation dismissed, where alleged cause of action arose outside state.

The plaintiff and the defendant corporation were non-residents of New York. The suit was based upon a tort committed outside New York. Defendant moved to set aside the service of the summons as invalid and void and to dismiss the complaint, contending that the court, the New York Supreme Court, New York County, Special Term, Part I, was without jurisdiction.

The court granted the motion to dismiss the suit, reaching the conclusion "that it is the policy of this state to refuse to entertain jurisdiction in such an action between non-residents based

upon an alleged tort committed in a foreign jurisdiction," citing *Gregonis v. P. & R. Coal & Iron Co.*, 235 N. Y. 152.

Jablonski v. Southern Pacific Co.,* New York Supreme Court, New York County, Special Term, Part I, 120 N. Y. L. J. 238. Commerce Clearing House Court Decisions Requisition No. 397060.

* The full text of this opinion is printed in the **New York Corporation Law Reporter**, page 9253.

taxation

CALIFORNIA

Property, intended for export, but remaining in state on assessment date, ruled subject to ad valorem taxation.

"The status of personal property sold to a foreign purchaser but in this state on tax day," observed the California Supreme Court, "is the question presented for decision by the county of Merced upon its appeal from an adverse judgment in an action to recover taxes. Although part of the property had been prepared for export, the greater portion of it was not in that condition and all of it was located at the plant of the seller in Merced County."

By March 15, 1945, the statutory date for assessment, 12% of plant had been shipped out of the county, 10% had been dismantled and crated or prepared for shipment, 34% had been dismantled but had not been crated or prepared for shipment, and 44% had not been dismantled. Not later than January 18, 1946, all of the machinery had been shipped out of the county of Merced by railroad and before the end of that month was enroute to South America by ocean carrier. The original assessment, made upon the basis of the value of the entire plant, was reduced by the board of supervisors to require payment of taxes only upon the 88% of the plant which was in the county on the tax day and the tax was paid under protest.

The California Supreme Court reversed a judgment in favor of the taxpayer, concluding that a contention that because 12% of the plant had been shipped out of the county and was clearly an export, the remaining 88%, whether dismantled and packaged or not was likewise an export, could not be sustained, quoting from an opinion of the Supreme Court of the United States containing the statement that "the exemption attaches to the export and not to the article before its exportation."

Empresa Siderurgica, S. A. v. County of Merced,* California Supreme Court, June 15, 1948. CCH Requisition No. 394493. *(Appeal filed in Supreme Court of the United States, September 29, 1948; Docket No. 327.)*

* The full text of this opinion is printed in the **State Tax Reporter**, California, page 12,012.

LOUISIANA

Watercraft, owned by foreign barge corporations engaged in interstate commerce, which came within boundaries of state at irregular intervals, ruled not to have a tax status there.

The United States Circuit Court of Appeals, Fifth Circuit, had before it the question of the constitutionality of taxes levied by the Louisiana Tax Commission under Act 152 of 1932, as amended by Act 59 of 1944, on the proportion of nonresident corporate appellees' lines of barges and tow boats in Louisiana as compared with their entire systems.

As to those appellees whose watercraft did not have their home port in Louisiana and which touched at a Louisiana port at irregular intervals in moving to and from other states, and which were only within the boundaries of Louisiana a small portion of the time, the court affirmed a judgment of the District Court holding that these tugboats acquired no tax situs in Louisiana and that no tax could be legally assessed and collected by Louisiana or the Louisiana port.

As to one of the appellees, also a foreign corporation, whose barges had their home port in New Orleans and operated in harbor traffic business there, the court ruled that these were properly taxed there.

Ott v. DeBardeleben Coal Corporation et al.,* 166 F. 2d 509. W. C. Perrault, First Assistant Attorney General, of Baton Rouge; Henry G. McCall, City Attorney, H. W. Lenfant, Alden W. Miller and Bertrand I. Cahn, Special Assistant Attorney General, of New Orleans, attorneys for appellant. Arthur A. Moreno, attorney for appellees. *(Appeal filed in the Supreme Court of the United States August 25, 1948; Docket No. 244. Jurisdiction noted, October 11, 1948.)*

* The full text of this opinion is printed in the **State Tax Reporter,** Louisiana, page 12,006.

MICHIGAN

Interruption of continuity of shipment of gasoline to a foreign country by storing within taxing jurisdiction for fifteen months prior to assessment date, ruled a break in continuity of shipment which subjected property to local ad valorem taxation.

"The question here for decision," said the Michigan Supreme Court, "is whether a quantity of gasoline in tanks in the city of Dearborn pending transshipment to Canada is liable for an ad valorem tax."

"Summarizing the factual situation, said gasoline was shipped intrastate by rail to appellant in Dearborn, stored there about 18 months in leased tanks, then transshipped by boat to Canada, and on April 1, 1947, after the gasoline had been stored in Dearborn about 15 months the city assessed it for ad valorem taxes. Was it exempt, as a commodity in foreign commerce?"

The court noted that the continuity

of transportation was interrupted by placing the gasoline in storage tanks where it remained for approximately 18 months before appellant procured ship transportation for Canada, and observed that the fact that the railroad bills of lading had been marked "For export to Canada" did not make the transportation by railroad and ship a continuous one.

Emphasizing that the crucial question, in determining whether a state's taxing power may be exerted, under such circumstances, is that of "continuity of transit," the court concluded that there was no continuity of transportation from the point of shipment to the destination in foreign commerce, and held that the gasoline in Dearborn on April 1, 1947, was subject to ad valorem taxation.

*Joy Oil Company, Ltd. v. State Tax Commission,** 32 N. W. 2d 472, Michigan Supreme Court, May 18, 1948. Shields Ballard, Jennings & Bishop of Lansing, attorneys for plaintiff. Eugene F. Black, Attorney General, Edmund E. Shepherd, Solicitor General, of Lansing, attorneys for defendant State Tax Commission. Dale H. Fillmore, Joel K. Underwood of Dearborn, attorneys for defendant City of Dearborn. Commerce Clearing House Court Decisions Requisition No. 391746. *(Petition for writ of certiorari filed in the Supreme Court of the United States August 16, 1948; Docket No. 223. Certiorari granted, October 11, 1948.)*

* The full text of this opinion is printed in the State Tax Reporter, Michigan, page 2552.

PENNSYLVANIA

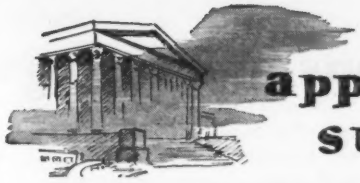
State Supreme Court affirms County Court ruling concerning the allocation of the income tax of a foreign mining company.

In *Commonwealth of Pennsylvania v. Minds Coal Mining Corporation,* 58 Dauph. 178, 60 D. & C. 149, (The Corporation Journal, March, 1947, page 289), the Court of Common Pleas of Dauphin County, held that sales of the product of a West Virginia mine, effected by a corporate sales agent in New York, which represented a foreign mining corporation with its only executive office in Pennsylvania, were assignable to Pennsylvania as Pennsylvania gross receipts, in allocating the income tax of the mining company. Upon appeal, this judgment has been affirmed, *per curiam,* by the Supreme Court of Pennsylvania.

Commonwealth of Pennsylvania v. Minds Coal Mining Corporation, Supreme Court of Pennsylvania, July 6, 1948.

Additional Missouri Sales Tax Defeated

The Missouri electorate on November 2d voted against Senate Joint Resolution 3 of the 1947-1948 Session proposing to add a section to the State Constitution providing for the payment of a soldiers' bonus and for the imposition of an additional 1% sales tax in that connection.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA

Docket No. 327. *Empreza Siderurgica, S. A. v. County of Merced,* 194 P. 2d 527. (The Corporation Journal, December, 1948, page 234.) Unexported machinery sold to a foreign purchaser—liability to ad valorem property taxes. **Appeal filed September 29, 1948. Jurisdiction noted, November 8, 1948.**

LOUISIANA

Docket No. 244. *Ott, Commissioner of Public Finance, et al. v. Mississippi Valley Barge Line Company et al.,* 166 F. 2d 509. (The Corporation Journal, December, 1948, page 235.) State property taxes on tow boats and barges—constitutionality as applied to watercraft moving in interstate commerce. **Appeal filed, August 25, 1948. Jurisdiction noted, October 11, 1948.**

MICHIGAN

Docket No. 223. *Joy Oil Company, Ltd. v. State Tax Commission,* 32 N. W. 2d 472. (The Corporation Journal, December, 1948, page 235.) Municipal ad valorem taxation on gasoline held in storage awaiting shipment in foreign commerce. **Petition for writ of certiorari filed, August 16, 1948. Certiorari granted, October 11, 1948.**

NEW YORK

Docket No. 342. *Arstein et al. v. Robert Reis & Company,* 77 N. Y. S. 2d 303. (The Corporation Journal, June, 1948, page 165.) Reclassification of stock—elimination of certain accumulated, undeclared, unpaid dividends on shares of first preferred stock. **Petition for writ of certiorari filed, October 8, 1948. Writ of certiorari denied, November 8, 1948.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin, 1948-1949.**

regulations and rulings

ALABAMA

Agricultural co-operatives are exempt from the payment of the corporation permit fee. (Opinion of the Attorney General to the County Agent, Russell County, State Tax Reporter, Alabama, ¶ 38-820.) Members of agricultural co-operatives purchasing goods from such cooperatives are not exempt from the sales or use tax. Such cooperatives must keep records pertaining to the collection of the sales tax due on such goods or merchandise. (Attorney General's Opinion to the County Agent, Russell County, State Tax Reporter, Alabama, ¶¶ 65-102, 66-001.)

ARKANSAS

In determining whether the state sales tax is to be paid on purchases made by national banks, the general rule to be used is as follows: Since national banks are created by the Federal Government, but are not supported by Federal funds, the sales tax must be paid upon purchases made by national banks except those that are made on governmental orders and paid for directly to the seller by warrants on government funds. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 7817.)

IOWA

In listing moneys and credits subject to property taxes, the federal income tax cannot be deducted by a taxpayer, since it is not a debt within the meaning of Chapter 429 of the Code. However, unpaid federal income tax is deductible by a corporation in making a return for and in behalf of its stockholders for the purpose of arriving at the value of the shares of stock of the corporation. In this instance, it is not a deduction of a debt from money and credits, but is a deduction allowable as a liability of the corporation in fixing the value of the shares of stock for the purpose of taxation. (Opinion of the Attorney General, State Tax Reporter, Iowa, ¶ 2032e.)

Vendors are not to bill or collect the use tax when selling to any tax certifying or tax levying body of Iowa or any governmental subdivision thereof. These groups are not exempt from the payment of the use tax but have been authorized by the State Tax Commission to report all use tax due directly to the Commission rather than to remit the tax to a registered vendor. Refund of tax claimed may then be paid where the property is used for certain purposes and where proper procedure is followed in making claim therefor. (Ruling of the State Tax Commission, State Tax Reporter, Iowa, ¶ 60-259.10.)

KANSAS

Rules have recently been released by the State Corporation Commission concerning motor carriers. These include rules pertaining to fees, reports and related matters. (State Tax Reporter, Kansas, ¶ 51-400 et seq.)

Regulations have recently been issued in connection with the Cigarette Tax by the Commission of Revenue and Taxation. (State Tax Reporter, Kansas, ¶ 65-500 et seq.)

KENTUCKY

An out-of-state concern which solicits orders for merchandise manufactured by it through a salesman who takes orders in various cities in Kentucky and delivers the merchandise ordered in the cities and towns where orders were obtained is subject to license taxes and to regulatory licenses imposed by such cities. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 30-011.)

MARYLAND

The repeal in 1948 of the section requiring annual sales tax returns is interpreted as repealing, by implication, the section requiring the filing of annual use tax returns. (Letter, Comptroller of the Treasury, State Tax Reporter, Maryland, ¶ 64-513.)

NORTH DAKOTA

A photographer who sends his representative from another state to North Dakota to make negatives which are in turn sent to the out-of-state studio for proofs and are subsequently mailed to the customers, is not liable for the transient merchant's license. (Opinion of the Attorney General, State Tax Reporter, North Dakota, ¶ 31-040.)

OHIO

A corporation organized under the laws of another state for the purpose of holding, selling, improving and leasing real estate is not transacting business in the state of Ohio, within the meaning of Section 8625-4, General Code, by merely owning real estate located therein or by the institution and prosecution of a suit in the state. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Ohio ¶ .407.)

RHODE ISLAND

The state business corporation tax accrues, for Federal income tax purposes, at the close of the calendar or fiscal year for which imposed and, in the case of a taxpayer which keeps its books and files its Federal income tax returns on the accrual basis, is deductible for that year. Where the books are kept and returns filed on the cash receipts and disbursements basis, the tax is deductible for the taxable year in which paid. (Federal Income Tax Ruling, I. T. 3920, State Tax Reporter, Rhode Island, ¶ 14-002.)

TEXAS

A use tax is due upon motor vehicles purchased out of Texas by a foreign corporation that is either domiciled in Texas or doing an intrastate business in Texas, if brought into Texas for use upon the highways of the state, even though such motor vehicles will be used only in interstate commerce. (Opinion of the Attorney General to Comptroller of Public Accounts, State Tax Reporter, Texas, ¶ 31-808.)

WYOMING

A construction company which purchases, controls and possesses materials on its own account, is solely responsible for payment for materials purchased and is therefore liable for payment of the use tax, despite the fact that another company takes the completed project and uses it in manufacturing. (Opinion of the Attorney General to the State Board of Equalization, State Tax Reporter, Wyoming, ¶ 7963.)

some important matters

for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

Alaska — Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

Delaware — Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia — Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Franchise (Income) Tax due before January 1.—Domestic and Foreign Corporations.

Georgia — Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

Iowa — Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

Louisiana — Annual Report due February 1.—Domestic Corporations.

Missouri — Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

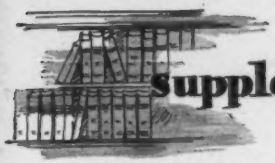
Ohio — Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations.

South Carolina — Statement due January 31.—Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

United States — Fourth Installment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

West Virginia — Annual Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

What Does a Transfer Agent Do? This illustrated pamphlet gives the highspots of a transfer agent's services in 3 minutes reading time, with explanatory text if you want to read further. Of value to small as well as large corporations.

What Constitutes Doing Business. (Revised to March 1, 1948.). A 187-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

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